

REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed March 2, 2007. The Examiner is thanked for conducting an interview with the Applicant on Friday, April 27, 2007 at 10:30 AM PST. In that interview the Examiner agreed with the Applicant that Lee did not teach or suggest that a first end cylindrically shaped about an axis that is perpendicular to a lateral plane of the vertebrae and that Shirado did not teach or suggest that the base adapted to be mounted on a second vertebrae could contact the first vertebrae.

Claims 1-81 were pending in the Application prior to the outstanding Office Action. Claims 70-76 and 78-81 are withdrawn from consideration. Claims 1-69 and 77 are rejected. Claim 1 is being amended as suggested by the Examiner. Claims 1-69 and 77 remain for the Examiner's consideration. Reconsideration and withdrawal of the rejections are respectfully requested.

ABSTRACT

The Abstract is objected to because it includes phrases which can be implied.

The Abstract has been amended as suggested by the Examiner. Accordingly, Applicants respectfully request that the objection to the Abstract be withdrawn.

CLAIM OBJECTIONS

Claims 1-6 are objected to because of informalities. Claim 1 has been amended as suggested by the Examiner. Accordingly, reconsideration and withdrawal of the objections are respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-6 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent Publication No. 2003/0109882 to Shirado et al. (hereinafter “*Shirado*”).

Applicant believes that Claim 1 is not anticipated by *Shirado* since Claim 1 includes the limitation that “a base adapted to be mounted to a second vertebra with the

beam mounted to the base, wherein the beam extends beyond the mounted base, where the base is adapted to be hung on the second vertebra, where the base is secured by an action of the first end contacting the first vertebra". Since *Shirado* does not disclose a vertical a base mounted on a second vertebrae which can contact a first vertebrae, it does not anticipate Claim 1.

Claims 2-6 each depend directly or indirectly from currently amended Claim 1 and are believed patentable for at least the same reasons as independent Claim 1 and because of the additional limitations of these claims.

Claims 7-9, 13-26, 30-43, 47-58, 61-69 and 77 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,415,659 to Lee et al. (hereinafter "*Lee*").

Applicant believes that Claim 7 is not anticipated by *Lee* since Claim 7 includes the limitation that "a spacer with a first end, wherein the first end has a curved surface formed about an axis, wherein the curved surface is adapted to contact a spinous process of a first vertebrae, and a second end, wherein the second end is planar, wherein the axis is parallel to the plane of the second end". Since *Lee* does not disclose a spacer with a first end curved surface formed about an axis parallel to the plane of the second end, it does not anticipate Claim 7.

Applicant believes that Claim 9 is not anticipated by *Lee* since Claim 9 includes the limitation that "a beam extending from the body, wherein the beam has a distal end adapted for contacting a spinous process of a L5 vertebra, wherein the distal end has a curved surface formed about an axis, wherein the axis is parallel to the plane of the beam". Since *Lee* does not disclose a beam with a distal end curved surface formed about an axis parallel to the plane of the beam, it does not anticipate Claim 9.

Applicant believes that Claim 26 is not anticipated by *Lee* since Claim 26 includes the limitation that "a beam extending from the body, the beam having a distal end with a curved surface formed about an axis, wherein the axis is parallel to the plane of the beam". Since *Lee* does not disclose a beam with a distal end curved surface formed about an axis parallel to the plane of the beam, it does not anticipate Claim 26.

Applicant believes that Claim 43 is not anticipated by *Lee* since Claim 43 includes the limitation that "a beam extending from the body, the beam having a distal

end with a curved surface formed about an axis, wherein the axis is parallel to the plane of the beam". Since *Lee* does not disclose a beam with a distal end curved surface formed about an axis parallel to the plane of the beam, it does not anticipate Claim 43.

Applicant believes that Claim 58 is not anticipated by *Lee* since Claim 58 includes the limitation that "a beam with a planar proximal end and a distal end having a concave surface that is formed about an axis, wherein the axis is parallel to the plane of the beam". Since *Lee* does not disclose a beam with a distal end concave surface formed about an axis parallel to the plane of the beam, it does not anticipate Claim 58.

Applicant believes that Claim 77 is not anticipated by *Lee* since Claim 77 includes the limitation that "a spacer extending from the body; the spacer having a distal end with a curved surface formed about an axis and a proximal end that is planar, wherein the axis is parallel to the plane of the proximal end". Since *Lee* does not disclose a spacer with a distal end curved surface formed about an axis parallel to the plane of the proximal end, it does not anticipate Claim 77.

Claims 8, 13-25, 30-42, 47-57 and 61-69 each depend directly or indirectly from Claims 7, 9, 26, 43 and 58 and are believed patentable for at least the same reasons as independent Claims 7, 9, 26, 43 and 58 and because of the additional limitations of these claims.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the § 102 rejections.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 10-12, 27-29, 44-46 and 59-60 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,415,659 to *Lee* et al.

Applicant believes that Claim 9 is not obvious over *Lee* since Claim 9 includes the limitation that "a beam extending from the body, wherein the beam has a distal end adapted for contacting a spinous process of a L5 vertebra, wherein the distal end has a curved surface formed about an axis, wherein the axis is parallel to the plane of the beam". Since *Lee* does not teach or suggest a beam with a distal end curved surface

formed about an axis parallel to the plane of the beam, Claim 9 was not obvious at the time of the invention.

Applicant believes that Claim 26 is not obvious over *Lee* since Claim 26 includes the limitation that “a beam extending from the body, the beam having a distal end with a curved surface formed about an axis, wherein the axis is parallel to the plane of the beam”. Since *Lee* does not teach or suggest a beam with a distal end curved surface formed about an axis parallel to the plane of the beam, Claim 26 was not obvious at the time of the invention.

Applicant believes that Claim 43 is not obvious over *Lee* since Claim 43 includes the limitation that “a beam extending from the body, the beam having a distal end with a curved surface formed about an axis, wherein the axis is parallel to the plane of the beam”. Since *Lee* does not teach or suggest a beam with a distal end curved surface formed about an axis parallel to the plane of the beam, Claim 43 was not obvious at the time of the invention.

Applicant believes that Claim 58 is not obvious over *Lee* since Claim 58 includes the limitation that “a beam with a planar proximal end and a distal end having a concave surface that is formed about an axis, wherein the axis is parallel to the plane of the beam”. Since *Lee* does not teach or suggest a beam with a distal end concave surface formed about an axis parallel to the plane of the beam, Claim 58 was not obvious at the time of the invention.

Claims 10-12, 27-29, 44-46 and 59-60 each depend directly or indirectly from Claims 9, 26, 43 and 58 and are believed patentable for at least the same reasons as independent Claims 9, 26, 43 and 58 and because of the additional limitations of these claims.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the § 103(a) rejections.

CONCLUSION

In light of the above, it is respectfully requested that all outstanding rejections be reconsidered and withdrawn. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

No fee is believed due in connection with this paper. However, the Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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